

**IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI**

KARLA K. ALLSBERRY, Individually and in )	
her official capacity as the Clerk of the )	
Circuit Court for Lincoln County, MO, )	
Plaintiff, )	
v. )	Case No. 19AC-CC00224
THE HONORABLE STEVEN R. OHMER, ET AL., )	Division II
Defendants. )	

**JUDGMENT**

This is a Judgment which resolves all four counts of the Second Amended Petition and the oral and written Motions to Dismiss. Before the Court are Plaintiff's Motion for Summary Judgment on her Second Amended Petition for declaratory judgment, injunctive relief and judicial review, and Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed on July 13, 2021.

The Court finds that no genuine, material, issues of fact are in dispute.

The Court finds that the issues presented in this case are not mooted by, but rather informed and controlled by, the September 14, 2021 Supreme Court decision in *Karla Allsberry, et al. v. Judge Patrick S. Flynn*, 628 S.W.3d 392 (2021).

The Second Amended Petition requests a declaratory judgment that Defendants acted in excess of their authority in violation of the Missouri Constitution and RSMo. §483.010 *et seq.* (Count I) that Defendants acted in excess of their authority by approving a plan in violation of RSMo. §610.010 *et*

*seq.* (Count II) for injunctive relief (Count III) and for judicial review (Count IV) of the decisions of the Circuit Court Budget Committee (“CCBC”). Count II, for violations of RSMo. §610.010 *et seq.* is dismissed, without prejudice, as moot for the reasons set forth below.

In January 2003, a previous clerk of the circuit court entered into a Consolidation Agreement with the circuit court *en banc* which provided that the elected Clerk of the Circuit Court of Lincoln County would be the appointing authority for both deputy clerks and division clerks.

In November 2018, Presiding Judge Patrick Flynn (“Judge Flynn”) and Circuit Clerk, Karla Allsberry (“Karla”) were both elected to their respective positions. They each took office on January 1, 2019.

On January 11, 2019, Judge Flynn and Associate Circuit Court Judges James Beck and Milan Berry (from Pike County) signed an amendment to the January 2003 Consolidation Agreement, providing that the presiding judge shall be the appointing authority over all non-statutory state-paid positions assigned to the Circuit Court of Lincoln County, and that the presiding judge shall be custodian of all personnel records for the deputy clerks. Associate Circuit Judge Gregory Allsberry, the husband of Plaintiff, abstained.

The judges comprising the CCBC then approved the January 11, 2019 amendment of the Consolidation Agreement and denied Plaintiff’s subsequent appeal.

The January 11, 2019 amendment of the Consolidation Agreement relied on administrative orders issued by the Missouri Supreme Court on October 8, 2009 and June 28, 2013 (“the two Administrative Orders”).

The two Administrative Orders relied on Article V, §4 of the Missouri Constitution, stating that all circuit courts must consolidate the deputy circuit clerks and the division clerks under the supervision of one appointing authority, who could be either the circuit clerk, an associate circuit judge or the presiding judge, and that the appointing authority would be the immediate supervisor over all deputy and division clerks and the custodian of all personnel records. The two Administrative Orders also provide that the presiding judge, after consultation with the Court *en banc* and the Circuit Clerk, shall submit a plan to the CCBC designating the appointing authority by November 13, 2009. Previous consolidation plans, like the 2003 Lincoln County Consolidation Agreement, were in compliance. The June 28, 2013 Administrative Order provides that any previous consolidation plans could be modified by the Circuit Court *en banc*, after consultation with the Circuit Clerk and other appointing authority, which may submit all revisions to the CCBC for approval.

Article V, §4 of the Missouri Constitution provides that the Supreme Court shall have general superintending control over all courts and tribunals, shall appoint a Clerk of the Supreme Court, and may appoint an administrator (“OSCA”) and other staff to aid in the administration of the business of the Supreme Court. It does not provide that the Supreme Court may appoint the

circuit court clerks, their deputies, or division clerks of the circuit courts.

Article V, §15.4 provides “personnel to aid in the business of the circuit court shall be selected as provided by law”. Article V, §5 of the Missouri Constitution provides that the Supreme Court may establish rules relating to practice, procedure and pleading, but shall not change substantive rights by such rules.

The general assembly, acting under Article V, §15.4, enacted a statute, RSMo. §483.245.2, which provides that the circuit clerks shall appoint all deputy clerks, including deputy clerks serving in courtrooms, shall prescribe and assign the duties of such deputy clerks, and may remove from office any such deputy clerks, while also providing that the division clerks shall be appointed by the judges of the respective divisions and that the division judges may remove from office their respective division clerks. RSMo. §483.080 also provides that every circuit clerk may appoint their deputies, but, “all clerks and their sureties shall be responsible for the conduct of their deputies or assistants.”

The Missouri Constitution provides that the deputy and division clerks shall be selected as provided by law and the general assembly enacted statutes in accordance with Article V, §15.4 of the Missouri Constitution, providing that the circuit clerks shall select and supervise the deputy clerks and the division judges shall select and supervise their respective division clerks.

Article III, §1 of the Missouri Constitution provides for the separation of powers between the judicial, executive and legislative branches of government. Each branch is precluded from exercising any power properly belonging to

either of the others, except in the instances in which the Constitution expressly directs or permits.

Article V, §4, which provides the Supreme Court with “general superintending control” does not expressly direct or permit the Supreme Court to override Article V, §15.4, which provides that the deputy and division clerks “shall be selected as provided by law”. On March 2, 2021, the Supreme Court ruled “This Court should not, indeed cannot due to constitutional restraints, establish some new rule pertaining to rights of appeal which would be contrary to extant statutory authority.” *State v. Johnson*, 617 S.W.3d 439, 445 (Mo. banc 2021).<sup>1</sup>

This Court has original jurisdiction over this case under Article V, §14 of the Missouri Constitution, which provides that the circuit courts shall have original jurisdiction over all cases, civil and criminal. This Court finds, however, that as an inferior court, it does not have jurisdiction to determine whether the two administrative orders issued by the Supreme Court violate either Article V, §§4, 5 and 15.4 and/or Article III, §1 of the Missouri Constitution, although in light of the recent decision in *Karla Allsberry, et al. v. Judge Patrick S. Flynn*, 628 S.W.3d 392 (2021) it appears that they are, in fact, unconstitutional.

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<sup>1</sup> The validity of the October 8, 2009 Administrative Order was waived in *Gall v. Steele*, 547 S.W.3d 564, 570 (Mo. banc 2018). The court relied on the fact that the clerk in *Gall v. Steele* had entered into a Consolidation Agreement with the presiding judge, which permitted the court *en banc* to resolve any disputes. There was a dispute about whether a deputy clerk should or should not be fired (apparently without cause). The Supreme Court held that the clerk had relinquished her right to hire and fire the deputy clerks, by signing the consolidation agreement. The concurring opinion states the Plaintiffs proceeded under the express assumption that the 2009 Administrative Order was valid.

In the instant cause, Clerk Allsberry did not agree to the January 11, 2019 amendment to the Consolidation Agreement and did not waive her statutory and constitutional rights to hire, fire and supervise the deputy clerks.

Accordingly, the Court rules that it does not have jurisdiction to determine the constitutional issues raised in Count I of Plaintiff's Second Amended Petition.

However, the Court does find that the January 11, 2019 amendment to the 2003 Consolidation Agreement is invalid because it violates RSMo. §483.245.2 and RSMo. §483.080. Accordingly, judgment is entered in favor of Plaintiff on Count I. The January 11, 2019 amendment to the 2003 Consolidation Agreement is void and unenforceable.

The decisions of the CCBC to approve the January 11, 2019 amendment to the 2003 Consolidation Agreement, and to deny Karla's appeal, are reversed under RSMo. §536.140, because they exceeded the authority of the agency, the CCBC; they are arbitrary, capricious and unreasonable and were unauthorized by law because the decisions of the CCBC violate RSMo. §483.245.2 and RSMo. §483.080. This resolves Count IV.

Defendants, and each of them, are permanently enjoined from interfering with, or preventing, Karla's exercise of her authority to hire, fire and supervise the deputy clerks as provided by RSMo. §483.245.2 and RSMo. §483.080. This resolves Count III.

Defendants' July 13, 2021 written Motion to Dismiss, and their oral Motion to Dismiss during the oral argument on July 12, 2021, are both denied. However, as stated above, the Court finds that it does not have jurisdiction to determine whether the two administrative orders issued by the Supreme Court violate the Missouri Constitution.

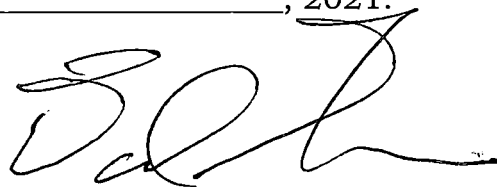
Judgment is entered in favor of Plaintiff, Karla Allsberry and against all Defendants in this case declaring that the January 11, 2019 amendment to the 2003 Consolidation Agreement is illegal, void, in excess of the power and authority of Defendants, and is unenforceable.

Karla Allsberry is, and has been since January 1, 2019, the proper appointing authority for all deputy clerks in Lincoln County, Missouri, as provided by RSMo. §483.245.2 and RSMo. §483.080.

The Court finds that Karla Allsberry is the prevailing party and is entitled to recover her attorneys' fees, pursuant to RSMo. §536.087 and RSMo. §536.085(4). Plaintiff is to submit her statement for attorneys' fees and any claim for a special factor, which justifies a rate in excess of \$75 per hour, under RSMo. §536.085(4) within thirty (30) days.

Court costs are awarded in favor of Plaintiff, Karla Allsberry and against all Defendants, jointly and severally.

SO ORDERED, this 22 day of November, 2021.

A handwritten signature in black ink, appearing to read 'D. Green', is written over a horizontal line.

JUDGE DANIEL GREEN